

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

JOHN ALLEN MALONEY, :
 :
Plaintiff-Appellant, : CASE NO. CA2004-01-021
 :
- vs - : D E C I S I O N
 : 10/4/2004
 :
OHIO DEPARTMENT OF INSURANCE, :
 :
Defendant-Appellee. :

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. 2003-03-0648

Derek A. Farmer & Associates Co., LPA, Derek A. Farmer, 800 Cross
Pointe Rd., Suite Q, Columbus, Ohio 43230, for plaintiff-appellant

James M. Petro, Ohio Attorney General, Scott Myers, Health and
Human Services Section, 30 East Broad Street, 26th Fl., Columbus,
Ohio 43215, for defendant-appellee

Per Curiam.

{¶1} Plaintiff-appellant, John Maloney, appeals a decision of
the Butler County Court of Common Pleas, affirming the administra-
tive decision of defendant-appellee, the Ohio Department of Insur-
ance, denying appellant's application to be licensed as a surety
bail bond agent in Ohio.

{¶2} In March 2002, appellant submitted an application to the
Ohio Department of Insurance ("ODI") to be licensed as a surety

bail bond agent. In his application, appellant disclosed that in 1995 he had been convicted of felony possession of marijuana with intent to distribute. As a result, appellant served a prison term and a period of parole.

{¶3} In July 2002, ODI issued a "Notice of Opportunity for Hearing" informing appellant that his application would be denied due to the felony conviction. Appellant subsequently requested a hearing on the application. An administrative hearing before an ODI officer was held in October 2002. At the hearing, appellant admitted his prior conviction, and stipulated to the admission of the indictment and sentencing entry. Appellant testified that his conviction stemmed from the seizure of marijuana at a rental property he owns, and that the marijuana belonged to a tenant. He denied any involvement in the trafficking of drugs. He also presented information about criminal rehabilitation. The hearing officer recommended that appellant's application be accepted, concluding that appellant "learned his lesson and paid a heavy price for tolerating any inappropriate activity at his rental property. With the trust and confidence of a prospective employer, he should be an honest and trustworthy bail bondsman."

{¶4} The superintendent of insurance rejected the hearing officer's recommendation, and in a February 2003 order, denied appellant's application. Citing the felony drug conviction, less than ten years old, the superintendent concluded that "[g]iven the severity of the offense, [appellant] lacks the high character and integrity required to be a bail bondsman in the State of Ohio."

Appellant appealed this decision to the common pleas court. The common pleas court concluded that, based on appellant's conviction, the superintendent's order was supported by reliable, probative and substantial evidence, and was not contrary to law. Appellant appeals, raising a single assignment of error:

{¶5} "THE SUPERINTENDENT OF THE DEPARTMENT OF INSURANCE ABUSED HER DISCRETION IN DENYING THE APPLICATION FOR SURETY BAIL BOND AGENT OF JOHN MALONEY, AND THE SUPERINTENDENT'S DECISION IS ARBITRARY AND CAPRICIOUS, THUS, THIS COURT MUST REVERSE THE DECISION OF THE LOWER COURT."

{¶6} When reviewing an order of an administrative agency the court of common pleas is limited to determining whether the order is supported by reliable, probative and substantial evidence, and is in accordance with the law. R.C. 119.12; Katz v. State of Ohio Dept. of Ins., Cuyahoga App. No. 80802, 2002-Ohio-3905, ¶11. R.C. 119.12 does not permit a trial de novo in the court of common pleas. In re A-1 National Agency Group LLC No. 1167, Van Wert App. No. 15-04-01, 2004-Ohio-3553, ¶15. When reviewing the trial court's determination, appellate review is limited to determining whether the trial court abused its discretion. Id. An abuse of discretion connotes more than a mere error of judgment, but an arbitrary, unreasonable or unconscionable attitude on the part of the trial court. Katz at ¶11.

{¶7} Appellant argues that the decision denying his application is an abuse of discretion because the superintendent cited the "severity" of appellant's conviction, and that his conviction was

less than ten years old, neither of which is a factor referenced in R.C. 3905.49.¹ He further contends that the decision denying the application contravenes Ohio's "public policy on hiring ex-offenders."

{¶8} R.C. 3905.49(A) provides, in pertinent part, that the superintendent of insurance may "refuse to issue any license as an agent or solicitor under this chapter, if the superintendent finds *** [t]he person has been convicted of a felony." When denying an application, R.C. 3905.49(E) provides the superintendent with discretion to consider certain enumerated factors and "[s]uch other factors as the superintendent determines to be appropriate under the circumstances." The statute clearly allows the superintendent to deny an application to anyone convicted of a felony, and grants the superintendent discretion in determining those factors relevant to the application under consideration. Consequently, the trial court did not abuse its discretion when it affirmed the administrative decision denying appellant's application. See Katz at ¶15. The assignment of error is overruled.

{¶9} Judgment affirmed.

YOUNG, P.J., POWELL and WALSH, JJ., concur.

1. Subsequent to appellant's application, R.C. 3905.49 was recodified as R.C. 3905.14.

[Cite as *Maloney v. Ohio Dept. of Ins.*, 2004-Ohio-5334.]